UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

WESTPORT INSURANCE CORPORATION,

Plaintiff ,

vs.

THE HAMILTON WHARTON GROUP, INC.
WALTER B. TAYLOR, Individually,

and
INTER-COMMUNITY MEMORIAL
HOSPITAL OF NEWFANE, INC., et al.,

Defendants.

THE HAMILTON WHARTON GROUP, INC.
WALTER B. TAYLOR, Individually,

Third-Party Plaintiffs,

vs.

IAAC, Inc., and INDEPENDENT INSURANCE
AGENTS & BROKERS OF NEW YORK, INC.,

Third-Party Defendants.

ANSWER TO FIRST AMENDED COMPLAINT WITH JURY DEMAND

Case No.: 10-CV-2188 (RMB)(THK)

Defendants Inter-Community Memorial Hospital of Newfane, Inc. n/k/a Eastern Niagara Hospital Inc. and Integrated Care Systems LLC ("Defendants"), by and through their undersigned counsel, as and for their Answer to the plaintiff's First Amended Complaint for Declaratory Relief ("Complaint") herein, allege upon knowledge, information and belief as follows:

1. **DENY** the allegations set forth in paragraphs 91, 92, 101, 106, 115, 117, 118, 119 and 120 of plaintiff's Complaint.

2. **ADMIT** the allegations set forth in paragraphs 10, 63 and 85 of plaintiff's Complaint.

3. **DENY KNOWLEDGE OR INFORMATION** sufficient to form a belief with respect to the allegations set forth in paragraphs 5, 6, 7, 8, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 66, 67, 76, 77, 78, 79, 86, 103 and 105 of plaintiff's Complaint.

4. With respect to the allegations set forth in paragraph 1 of plaintiff's Complaint, admit that plaintiff brings this action for a declaratory judgment regarding insurance coverage, state that the allegations set forth in that paragraph refer to documents attached to the Complaint and respectfully refer the Court to said documents for their contents, and deny the remaining allegations set forth therein.

5. With respect to the allegations set forth in paragraph 2 of plaintiff's Complaint, admit that plaintiff brings this action for a declaratory judgment regarding insurance coverage, state that the allegations set forth in that paragraph refer to documents attached to the Complaint and respectfully refer the Court to said documents for their contents, and deny the remaining allegations set forth therein.

6. With respect to the allegations set forth in paragraph 3 of plaintiff's Complaint, state that plaintiff's allegations state a legal conclusion to which no response is required, but to the extent such response is deemed required, deny the allegations set forth in that paragraph.

7. With respect to the allegations set forth in paragraph 4 of plaintiff's Complaint, state that plaintiff's allegations state a legal conclusion to which no response is required, but to the extent such response is deemed required, deny the allegations set forth in that paragraph.

8. With respect to the allegations set forth in paragraph 9 of plaintiff's Complaint, admit that Defendant Inter-Community Memorial Hospital of Newfane, Inc., n/k/a Eastern Niagara Hospital, Inc., is a New York corporation, but deny the remaining allegations set forth in that paragraph.

9. With respect to the allegations set forth in paragraph 62 of plaintiff's Complaint, admit upon information and belief that the Hamilton Wharton Group, Inc. ("Hamilton Wharton") and Walter B. Taylor ("Taylor") served as Program Administrator of the New York Health Care Facilities Workers' Compensation Trust (the "Trust") from some point in 1997 through some point in 2006, in addition to providing other services to that Trust, but deny knowledge or information sufficient to form a belief with respect to the remaining allegations set forth therein.

10. With respect to the allegations set forth in paragraph 64 of plaintiff's Complaint, state that the allegations set forth therein state conclusions of law to which no response is required, but to the extent a response is required, Defendants admit that they were members of the Trust, and that members Inter-Community Memorial Hospital of Newfane, Inc. n/k/a Eastern Niagara Hospital, Inc. and Integrated Care Systems, LLC operated a hospital and nursing home, respectively, but deny knowledge or information sufficient to form a belief with respect to the remaining allegations set forth in that paragraph.

11. With respect to the allegations set forth in paragraph 65 of plaintiff's Complaint, admit upon information and belief that Defendants Hamilton Wharton and Taylor had duties and responsibilities to the Trust and/or its members pursuant to written agreements with the Trust, which speak for themselves, and/or duties and responsibilities which arose by operation of law, and deny knowledge or information sufficient to form a belief with respect to the remaining allegations set forth in that paragraph.

12. With respect to the allegations set forth in paragraph 68 of plaintiff's Complaint, state that the allegations set forth legal conclusions to which no response is required, but to the extent such response is required, deny knowledge or information sufficient to form a belief with respect to the remaining allegations set forth in that paragraph.

13. With respect to the allegations set forth in paragraph 69 of plaintiff's Complaint, admit that Defendants have received "assessment billing package(s)" and invoices from the New York State Workers' Compensation Board, but deny knowledge or information sufficient to form a belief with respect to the remaining allegations set forth in that paragraph.

14. With respect to the allegations set forth in paragraph 70 of plaintiff's Complaint, admit that the New York State Workers' Compensation Board commenced an action in 2008 in the State of New York Supreme Court, County of Albany under Index Number L-00076-08, respectfully refer the Court to the complaint in that action, which speaks for itself, and deny the remaining allegations set forth in that paragraph.

15. With respect to the allegations set forth in paragraph 71 of plaintiff's Complaint, state that the allegations set forth in this paragraph refer to a document annexed to the Complaint, respectfully refer the Court to said document for its contents and deny knowledge or information sufficient to form a belief with respect to the remaining allegations set forth in that paragraph.

16. With respect to the allegations set forth in paragraph 72 of plaintiff's Complaint, state that the allegations set forth in this paragraph refer to a document annexed to the Complaint, respectfully refer the Court to said document for its contents and deny knowledge or information sufficient to form a belief with respect to the remaining allegations set forth in that paragraph..

17. With respect to the allegations set forth in paragraph 73 of plaintiff's Complaint, state that the allegations set forth in this paragraph refer to a document annexed to the Complaint, respectfully refer the Court to said document for its contents and deny knowledge or information sufficient to form a belief with respect to the remaining allegations set forth in that paragraph.

18. With respect to the allegations set forth in paragraph 74 of plaintiff's Complaint, admit that Defendants filed a complaint against Hamilton Wharton and Taylor and other Defendants on June 27, 2008 which commenced an action currently pending in the State of New York Supreme Court, Niagara County under Index Number 133991-08, respectfully refer the Court to said complaint, as well as the other complaints referenced in that paragraph, for their contents, and deny knowledge or information sufficient to form a belief with respect to the remaining allegations in that paragraph. Defendants further state that Defendants' underlying complaint, as attached to the plaintiff's Complaint, is incomplete.

19. With respect to the allegations set forth in paragraph 75 of plaintiff's Complaint, state that the allegations set forth in this paragraph refer to documents annexed to the Complaint, respectfully refer the Court to said documents for their contents and deny knowledge or information sufficient to form a belief with respect to the remaining allegations set forth in that paragraph.

20. With respect to the allegations set forth in paragraph 80 of plaintiff's Complaint, state that the allegations set forth in this paragraph refer to a document annexed to the Complaint, respectfully refer the Court to said document for its contents and deny knowledge or information sufficient to form a belief with respect to the remaining allegations set forth in that paragraph.

21. With respect to the allegations set forth in paragraph 81 of plaintiff's Complaint, state that the allegations set forth in this paragraph refer to a document annexed to the Complaint, respectfully refer the Court to said document for its contents and deny knowledge or information sufficient to form a belief with respect to the remaining allegations set forth in that paragraph.

22. With respect to the allegations set forth in paragraph 82 of plaintiff's Complaint, state that the allegations set forth in this paragraph refer to a document annexed to the Complaint, respectfully refer the Court to said document for its contents and deny knowledge or information sufficient to form a belief with respect to the remaining allegations set forth in that paragraph.

23. With respect to the allegations set forth in paragraph 83 of plaintiff's Complaint, state that the allegations set forth in this paragraph refer to a document annexed to the Complaint, respectfully refer the Court to said document for its contents and deny knowledge or information sufficient to form a belief with respect to the remaining allegations set forth in that paragraph.

24. With respect to the allegations set forth in paragraph 84 of plaintiff's Complaint, state that the allegations set forth in this paragraph refer to a document annexed to the Complaint, respectfully refer the Court to said document for its contents and deny knowledge or information sufficient to form a belief with respect to the remaining allegations set forth in that paragraph.

25. With respect to the allegations set forth in paragraph 87 of plaintiff's Complaint, state that the allegations set forth in this paragraph refer to documents annexed to the Complaint, respectfully refer the Court to said documents for their contents and deny knowledge or information sufficient to form a belief with respect to the remaining allegations set forth in that paragraph.

26. With respect to the allegations set forth in paragraph 88 of plaintiff's Complaint, repeat and re-allege their responses to paragraphs 1 through 87 of the Complaint as if fully set forth herein.

27. With respect to the allegations set forth in paragraph 89 of plaintiff's Complaint, state that the allegations set forth legal conclusions to which no response is required, further state that the allegations set forth in that paragraph refer to documents attached to the Complaint and respectfully refer the Court to said documents for their contents, and, to the extent a response to the allegations in that paragraph is required, deny the remaining allegations set forth in that paragraph.

28. With respect to the allegations set forth in paragraph 90 of plaintiff's Complaint, state that the allegations set forth legal conclusions to which no response is required, further state that the allegations set forth in that paragraph refer to documents attached to the Complaint and respectfully refer the Court to said documents for their contents, and deny the remaining allegations set forth in that paragraph.

29. With respect to the allegations set forth in paragraph 93 of plaintiff's Complaint, repeat and re-allege their responses to the allegations set forth in paragraphs 1 through 92 of the Complaint as if fully set forth herein.

30. With respect to the allegations set forth in paragraph 94 of plaintiff's Complaint, state that the allegations set forth in that paragraph refer to a document attached to the Complaint, respectfully refer the Court to said document for its contents, and deny the remaining allegations set forth in that paragraph.

31. With respect to the allegations set forth in paragraph 95 of plaintiff's Complaint, state that the allegations set forth legal conclusions to which no response is required, further state that the allegations set forth in that paragraph refer to documents attached to the Complaint and respectfully refer the Court to said documents for their contents, and, to the extent a response to the allegations in that paragraph is required, deny the remaining allegations set forth in that paragraph.

32. With respect to the allegations set forth in paragraph 96 of plaintiff's Complaint, state that the allegations set forth legal conclusions to which no response is required, further state that the allegations set forth in that paragraph refer to documents attached to the Complaint and respectfully refer the Court to said documents for their contents, and, to the extent a response to the allegations in that paragraph is required, deny the remaining allegations set forth in that paragraph.

33. With respect to the allegations set forth in paragraph 97 of plaintiff's Complaint, state that plaintiff's allegations state a legal conclusion to which no response is required, but to the extent such response is deemed required, deny the allegations set forth in that paragraph.

34. With respect to the allegations set forth in paragraph 98 of plaintiff's Complaint, repeat and re-allege their responses to the allegations set forth in paragraphs 1 through 97 of the Complaint as if fully set forth herein.

35. With respect to the allegations set forth in paragraph 99 of plaintiff's Complaint, state that the allegations set forth legal conclusions to which no response is required, further state that the allegations set forth in that paragraph refer to documents attached to the Complaint and respectfully refer the Court to said documents for their contents, and, to the extent a response to the allegations in that paragraph is required, deny the remaining allegations set forth in that paragraph.

36. With respect to the allegations set forth in paragraph 100 of plaintiff's Complaint, state that the allegations set forth in this paragraph refer to a document attached to the Complaint and respectfully refer the Court to said document for its contents, and deny knowledge or information sufficient to form a belief with respect to the remaining allegations set forth in that paragraph.

37. With respect to the allegations set forth in paragraph 102 of plaintiff's Complaint, Defendants repeat and re-allege their responses to paragraphs 1 through 101 of the Complaint as if fully set forth herein.

38. With respect to the allegations set forth in paragraph 104 of plaintiff's Complaint, state that the allegations set forth in this paragraph refer to a document attached to the Complaint and respectfully refer the Court to said document for its contents, and deny knowledge or information sufficient to form a belief with respect to the remaining allegations set forth in that paragraph.

39. With respect to the allegations set forth in paragraph 107 of plaintiff's Complaint, Defendants repeat and re-allege their responses to the allegations set forth in paragraphs 1 to 106 of the Complaint as if fully set forth herein.

40. With respect to the allegations set forth in paragraph 108 of plaintiff's Complaint, state that the allegations set forth in this paragraph refer to documents attached to the Complaint and respectfully refer the Court to said documents for their contents, and deny knowledge or information sufficient to form a belief with respect to the remaining allegations set forth in that paragraph.

41. With respect to the allegations set forth in paragraph 109 of plaintiff's Complaint, state that the allegations set forth in this paragraph refer to a document attached to the Complaint, respectfully refer the Court to said document for its contents, and deny knowledge or information sufficient to form a belief with respect to the remaining allegations set forth in that paragraph.

42. With respect to the allegations set forth in paragraph 110 of plaintiff's Complaint, Defendants state that the allegations set forth in that paragraph state a legal conclusion to which no response is required, but to the extent such response is required, deny the allegations set forth in that paragraph.

43. With respect to the allegations set forth in paragraph 111 of plaintiff's Complaint, state that the allegations set forth in that paragraph state a legal conclusion to which no response is required but, to the extent a response is required, deny the allegations in that paragraph.

44. With respect to the allegations set forth in paragraph 112 of plaintiff's Complaint, Defendants repeat and re-allege their responses to the allegations set forth in paragraphs 1 through 111 of the Complaint as if fully set forth herein.

45. With respect to the allegations set forth in paragraph 113 of plaintiff's Complaint, state that the allegations set forth in this paragraph refer to a document attached to the Complaint, respectfully refer the Court to said document for its contents and deny knowledge or information sufficient to form a belief with respect to the remaining allegations set forth in that paragraph.

46. With respect to the allegations set forth in paragraph 114 of plaintiff's Complaint, state that the allegations set forth legal conclusions to which no response is required, further states that the allegations set forth in that paragraph refer to documents attached to the Complaint and respectfully refer the Court to said documents for their contents, and, to the extent a response to the allegations in that paragraph is required, deny the remaining allegations set forth in that paragraph.

47. With respect to the allegations set forth in paragraph 116 of plaintiff's Complaint, Defendants repeat and re-allege their responses to the allegations set forth in paragraphs 1 through 115 of the Complaint as if fully set forth herein.

48. Defendants deny all allegations in the Complaint not hereinbefore admitted, denied or otherwise controverted.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

49. The plaintiff's Complaint fails to state a claim upon which relief can be granted.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

50. The plaintiff has waived its right or is estopped from denying coverage because of its own acts and omissions, and/or the acts or omissions of its agents.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

51. The plaintiff's policy is ambiguous, and the ambiguities should be construed against Westport.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

52. Upon information and belief, the conduct, acts, errors and omissions of Hamilton Wharton and Taylor which form the basis for the claims asserted in the Underlying Complaints are professional services insured by Westport Insurance Policy Number WED4NY006226900, attached as Exhibit 1 to plaintiff's Complaint (the "Policy"), and/or other insurance policies issued by plaintiff to Hamilton Wharton and/or Taylor.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

53. Upon information and belief, the Underlying Complaints allege a failure by Hamilton Wharton and Taylor to provide certain professional services as well as ordinary and gross negligence in the provision of such services. Said allegations are not excluded as "intentional, dishonest, fraudulent, criminal, or malicious conduct" under the Policy.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

54. Upon information and belief, neither Hamilton Wharton nor Taylor acted as the third-party administrator of the Trust. Upon information and belief, other entities were engaged by Hamilton Wharton and Taylor to act as the Trust's third-party administrator. Accordingly, Exclusion G of the Policy does not apply to preclude coverage.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE

55. Upon information and belief, the claims set forth in the Underlying Complaints seek recovery for claims or losses resulting from the conduct of Hamilton Wharton and Taylor. Because the Underlying Complaints do not seek recovery for a "claim" or "loss" resulting from a third-party insurer's financial inability to pay, insolvency, receivership, bankruptcy or liquidation, this exclusion is inapplicable.

AS AND FOR A EIGHTH AFFIRMATIVE DEFENSE

56. Defendants hereby adopt and incorporate by reference any and all other affirmative defenses asserted or to be asserted by any of the other defendants in the within action to the extent that Defendants may share in such a defense.

JURY TRIAL DEMAND

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Defendants demand a trial by jury in this action of all issues so triable.

DATED: Buffalo, New York
January 31, 20110

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CERTIFICATE OF SERVICE

The undersigned, an attorney admitted to practice pro hac vice in the United States District Court for the Southern District of New York, hereby certifies that a copy of the Answer with Jury Demand was served on the attorneys listed below Via First Class Mail on January 31 2011, at the addresses indicated below:

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The Estate of Paul C. Maggio d/b/a Patchogue Nursing Center; Royal Health Care Services,
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January 31, 2011

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